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Under forty-nine masters

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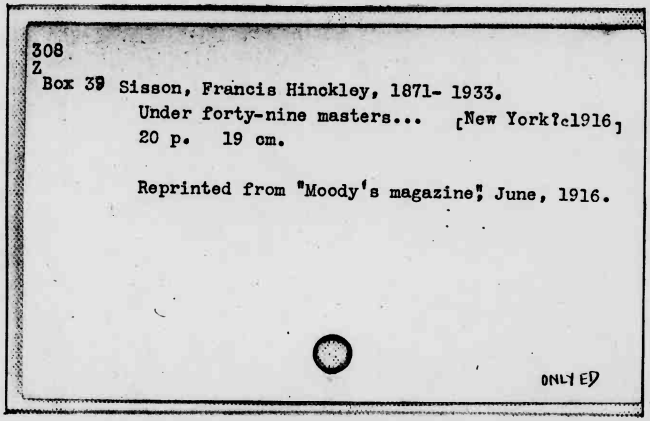

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Under Forty-nine Masters

By

Francis H. Sisson

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Assistant to Chairman,
Railway Executives' Advisory Committee

"No man can serve two masters. Is there public advantage in compelling a corporation to serve three or more?"

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Under Forty-nine Masters

"No man can serve two masters. Is there public advantage in compelling a corporation to serve three or more?"

THIS is the pertinent question put by the Public Service Commission of Massachusetts in reporting the results of its investigation of the New York, New Haven and Hartford Railroad Company to the Legislature of Massachusetts. This is a question, indeed, which strikes at the very heart of the railroad problem in this country to-day, and upon its answer hangs the issue of private ownership or Government ownership of the railroads. In the failure of Congress to exercise more completely its constitutional right to regulate commerce, the States have encroached upon its prerogatives, and are to-day actually regulating interstate commerce by indirect methods all over the country. Like most other abuses of power, this has been a growth.

Railroads Under State Rule

America's first general railroad legislation was enacted by Michigan in 1848. Illinois passed a railroad law the following year, and five years later, in 1854, Ohio followed suit. These were the beginnings of the present system of railroad regulation in this country, and nothing could be more antipodal than the public ideals prevalent then and now. Restraint was not remotely considered in the early days. The railroads were given the widest latitude for their performance, and the substance and, indeed, purpose of many

of these early statutes was a specific disclaimer of State connection with railroads involving responsibility. To make this emphatic some States revised their constitutions!

This policy was fortunate for the railroads. While it shows clearly that the States either misunderstood or ignored the material development and internal improvement, which the advent of the carriers foreshadowed, it gave to individual initiative the freedom it required, and to the nation the leeway necessary for the foundation of the world's greatest transportation system.

Our Unco-ordinated System

To-day, that situation is changed. Early legislative liberality has vanished, yielding place to a most confusing, multifarious, unscientific and vexatious system of railroad laws and regulations. Probably at no time, the world over, has human enterprise, of any character, been subjected to a similar system of penalties and restrictions.

One Federal commission and forty-eight State commissions exercise sweeping authority over our railroads. Congress and forty-eight State legislatures, from time to time, increase, respectively, the powers of the Federal and the State commissions. As the latter act independently and entirely without cooperation, confusion and uncertainty follow. Accordingly, our general railroad policy lacks uniformity, proportion, definiteness and efficiency. The closer it is examined, the more one is convinced of the truth of the old adage, "Too many cooks spoil the broth."

Views of Two Presidents

President Roosevelt once admonished the nation in a message to Congress to deal sensibly with the railroads. Said he: "It must not be forgotten that our railways are the arteries through which the commercial life-blood of this nation flows. Nothing could be more foolish than the enactment of legislation which would unnecessarily interfere with the development and operation of these commercial agencies."

More recently, President Wilson wrote: "The interest of the producer, the shipper, the merchant, the investor, the financier and the whole public in the proper maintenance and complete efficiency of the railways is too manifest. They are indispensable to our whole economic life, and railway securities are at the very heart of most investments, large and small, public and private, by individuals and by institutions."

Trade is not limited today to circumscribed areas. Practically every article of commerce finds the competing product of another region in any place of sale. This competition of product with product is the competition of commerce itself, and it is promoted and developed by the railroads. While the latter remain free and unhampered by restrictive and punitive regulation, they can move the products of the country at rates reasonable alike to producer, consumer and railroad, thus keeping alive that healthy competition which is the life of trade. Today, unhappily, the tendency toward over-regulation and

over-legislation of the several State commissions and legislatures is plainly paralyzing this function of the carriers.

Discriminating State Laws

Sectional selfishness and shortsightedness have led to the passage of State laws giving a preference to railroad traffic within circumscribed areas, at the expense and to the prejudice of neighboring States served by the railroads subjected to these enactments. Fifteen States, by prescribing a minimum daily movement for freight cars, or by imposing heavy penalties for delays, attempt to favor their own traffic. Some of these have fixed the minimum moving distance for a freight car at 50 miles a day, the average for the whole country being, approximately, only 26 miles. In one State the penalty for delay is *ten dollars an hour*. Twenty States regulate hours of railway service, the variations running from 10 to 16 hours a day. Twenty-eight States specify headlight requirements without an approach to uniformity; and fourteen States have dissimilar safety-appliance acts. Compliance with these requirements places a burden upon the railroads which is not borne alone by traffic from these discriminating States, but is imposed upon the whole volume of traffic entering these States.

State laws, moreover, are not merely suggestive. They are positively mandatory, and divest the carrier absolutely of discretion to develop new markets or to deal with trade equities or exigencies. The State rate is the carrier's guiding star; the State law, or commission regulation, its compass. By these must it steer. As a result of such procedure, the creative, aggressive individuality and experience of the railroad is throttled and subordinated to the caprice, arbitrary rule and inexperience of a number of political regulators whose performance is mechanical, superficial and selfish.

This development is one result of the "legislation" decried by President Roosevelt, and is the answer of several States to "the complete efficiency of the railways" desired by President Wilson.

State Policies Conflict

Mr. Judson Clements, of the Interstate Commerce Commission, protested against the embarrassment occasioned the railroads through the conflict and divergence in State railroad policies, in an address before a convention of State Railroad Commissioners, in November, 1914; and President Ripley, of the Santa Fe, declared that Government ownership of the railroads was inevitable, in consequence of the volume of repressive restrictions governing railroads, but added that this would be fatal, because of its probable politication.

President Wilson's recommendation to Congress, to appoint a commission of inquiry as to the status of the railroads and present conditions of operation, followed by the introduction of the Newlands' resolution for a corresponding purpose, invites an examination of our present railroad policy.

Let us go back a few years and glance over the activities of State railroad regulation in order to form an estimate of its merits and of the justice of the general railroad complaint.

Rate-Reducing Crusade

In 1907 twenty-one States reduced railroad passenger rates. These were: Alabama Arkansas, Georgia, Indiana, Illinois, Iowa, Kansas, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, Virginia, West Virginia and Wisconsin. Eleven States established railroad commissions, as follows: Colorado, Indiana, Michigan, Montana, Nevada, New Jersey, New York, Oklahoma, Oregon, Pennsylvania and Vermont. Sixteen others enlarged the powers of existing commissions: Alabama, Arkansas, Florida, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, New Hampshire, North Carolina, South Carolina, South Dakota, Texas, Washington and Wisconsin. In addition, sixteen States adopted laws reducing freight rates or establishing "maximum" freight charges, and regulating demurrage penalties. These were: Alabama, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, South Dakota, Texas, Virginia and Washington. Public Utilities laws were passed by New York and Wisconsin, of a most comprehensive and sweeping character.

In the foregoing enumerations are designated *thirty-four* individual States, each of which sought

to restrain and regulate railroads within its own borders, irrespective of the Federal control by Congress and the Interstate Commerce Commission, and wholly indifferent to the steps taken by any or all of the other thirty-three States. They did an inevitably unscientific piece of work. For illustration: Indiana fixed the demurrage penalty at *one* dollar a day for each car which a railroad failed to furnish to a shipper; North Dakota made it *two* dollars; but Kansas and North Carolina placed it at *five* dollars per diem. Nebraska reduced its passenger rates to two cents a mile and the law was taken to the Supreme Court of the State. While a decision was pending, Kansas announced its intention of adopting a similar law if the Nebraska statute was upheld, on the ground that *a fare remunerative in Nebraska should also be remunerative in Kansas!*

Railroads and the Panic

Now, it must be borne in mind, the Fall of the year which witnessed this legislative campaign against the carriers ushered in a regular, full-blown panic. The strain of this double visitation nearly wrecked our railroads and, as a matter of fact, drove many into bankruptcy. The tremendous shrinkages in income, as a result of the rate-reducing laws, coupled with a nation-wide business stagnation and condition of industrial paralysis, proved too much for a number of our railroads and a monumental strain to those which survived.

President Wilson regards the nation's railroads

as "the one common interest of our industrial life." The individual States referred to, by their conduct in 1907, seemingly were united in regarding them as "the one common scapegoat which should be kicked with impunity."

In the years following 1907 our courts were busy defeating several of the railroad laws passed in the year mentioned. In Alabama, under the Comer régime, hostilities between the Federal and State authorities were barely averted; while in Minnesota suits were instituted which were not decided for six years. When the Federal Supreme Court handed down its opinion therein, the Great Northern and the Northern Pacific Companies suffered a loss exceeding $3,000,000 as a result of State reductions in freight rates.

The year 1907 and those immediately following constituted one unending nightmare for the railroads. In 1908, railroad receipts declined $300,000,000, and outlays for current requirements, extensions and improvements were reduced almost to the vanishing point. This affected adversely every industry dependent upon the carriers. For the four years ended with 1911, only 526,350 new freight cars were purchased as against 940,000 for the four years ended in 1907. This was a shrinkage of almost 50 per cent. The decline in the number of locomotives built was 38 per cent. on the same comparison, the totals being, in round figures, 18,000 prior to 1907, and 11,000 prior to 1911. In 1912, net earnings were $65,000,000 less than in 1910, which shows that the railroads were

still being subjected to Governmental activity, compelling new expenditures.

Multiplicity of State Laws

In Congress and in State Legislatures railroad bills were freely introduced. In 1909, in 41 States, 664 new laws affecting railroads were enacted. In 1911, in 40 States, new railroad laws totalled 276. In 1912, in 19 States, 48 measures for further railroad control became laws; and, in 1913, out of the magnificent total of 1395 proposed enactments, 230 were placed upon the statute books of the several States. All told, between 1912 and 1915, it has been computed that upward of 4,000 bills affecting railroads were introduced into Congress and our several State Legislatures, of which 440 have become laws.

According to these figures, it would seem that the pursuit of the railroads has not declined among State lawmakers; and from this immense volume of State legislation, it is quite conceivable that much of it is useless and burdensome. Certain it is that, in no particular, has it added anything to railroad revenue; while it can be shown affirmatively that it has cost the railroads millions of dollars through forced additional expenditures.

Wages, Taxes, Receiverships

Since 1906 the average wages of railroad employes has risen 32.5 per cent., while railroad taxes have increased 69 per cent. Instead of increased rates for railroad service, coincident with these extraordinary advances in wages and taxes,

further reductions in numerous State rates have been enforced. The Interstate Commerce Commission granted commodity increased rates in Eastern territory, it is true; but its reductions for nine years are more than an offset to these. Between June 30, 1907 and June 30, 1915, the railroads spent $4,800,000,000 in improvements and increased facilities. Notwithstanding this average expenditure of $600,000,000 a year, the Bureau of Railway Economics' estimate shows a shrinkage of $21,000,000 in net operating income in 1915, compared with 1907.

To cap the climax, after all this regulation, today we have 82 railways, with a mileage of 42,000 miles and a total capitalization of $2,264,000,000 in the hands of receivers. Never before in the history of American railroad operation and management was there recorded so large an aggregate railroad mileage bankrupt at one time. The chairman of the Michigan Railroad Commission, a year ago, said: "Conditions under which the roads were operating in this State caused me to look into the question some time ago for my own enlightenment and I was dumbfounded to learn that of the 56 roads in Michigan 33 of them were not earning enough properly to pay the interest on their funded debt."

States Control Operation

In recent years the aim or direction of railroad restrictive legislation has been changed. Rate reductions were the objective eight or nine years ago; now, the legislative desire is to control rail-

road operation. In this undertaking railroad labor has a potential voice. This development portends heavy additional expenditures for the railroads and railroad managers are sorely perplexed. Placed between the upper and nether millstones of reduced income and enlarging outlay, how can they provide funds for annual fixed charges; maintenance and operating expenses; replacements and repairs; development to keep pace with natural business growth; and, most important of all, how are they going to provide a surplus, the sanctuary, the Gibraltar of every going concern?

Railroad salvation is spelled S-U-R-P-L-U-S. Upon this point the words of President James McCrea, of the Pennsylvania Railroad Company, before the Engineers' Arbitration Commission, are pertinent. Said he: "How are they (the railroad managers) going to provide the additional capital that is required to make the improvements that the public demand and which the necessities of proper transportation require? The money for this purpose can only be secured from the public, from the investors; and, therefore, you must keep up your earnings sufficiently to show a credit that will result in investors supplying you with the money that is needed. Now the basis of credit is what you have over at the end of the year, after you have made a reasonable return upon the capital already invested."

"Extra-Crew" and Other Laws

Bearing in mind this imperative obligation upon a railroad to maintain a surplus, let us return

to the present legislative tendency to regulate operation, and note some of its results. The most noxious legislation of this character is designated the "train-crew" or "extra-crew" law. Its sponsor is the Brotherhood of Railroad Trainmen. This measure aims to increase the number of men employed on freight trains, passenger trains, or in switching service—at times, in all three employments.

Twenty States have adopted this law: Arizona, Arkansas, California, Connecticut, Indiana, Maine, Maryland, Mississippi, Nebraska, Nevada, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Washington and Wisconsin. Nine attempts in six years have been made to secure Federal approval for such a law, but without success. Governor Sulzer approved a train-crew law for New York, after Governors Hughes and Dix had each vetoed a similar bill. Vetoes were also recorded against it by Governors Foss, of Massachusetts, Cruce, of Oklahoma, and Harmon, of Ohio. It subsequently became a law in Ohio.

Twenty-one States, however, refused to enact this law: Colorado, Delaware, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Montana, New Hampshire, New Mexico, North Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia and Wyoming. This clearly shows that there is ground for diversity of opinion, and that the railroads must have some justification for their assertion that such a law does not increase either safety or efficiency, but imposes unnecessary burdens upon railroad management. Missouri adopted a train-crew law, but, on a referendum to the voters of the State, the law was rejected by a vote of 324,085 to 159,593—more than two to one in favor of the railroads.

Drain on Railroad Revenue

Extra-crew laws cost the Pennsylvania Railroad Company $550,000 a year in Pennsylvania, $180,000 a year in New Jersey, and $120,000 in New York. The aggregate, $850,000, represents 5 per cent. on $17,000,000 of capital. The Federal Law restricting the hours of telegraph labor costs this railroad company $500,000 additional yearly, or 5 per cent. on $10,000,000 of capital. The semi-monthly pay bill, obligatory in several States, costs the Pennsylvania $250,000 a year, or 5 per cent. on $5,000,000 of capital. State laws requiring the Pennsylvania to use regular passenger coaches for the benefit of crews on trains carrying baggage, express or mail only, involve the diversion from profitable use of cars representing $400,000 of equipment investment. All together, the Pennsylvania, in complying with these laws, pays as much each year as would represent a return at 5 per cent. upon $32,000,000 of capital.

In the fiscal year 1914, 166 railroads, operating 204,610 miles, reported an expense of $4,051,533 for compliance with extra-crew legislation. This amount equals a return of 5 per cent. on $80,000,000 of capital. These companies reported a total expense of $28,703,983 in consequence of legislation regulating operation. This aggregate

equals a 5-per-cent. dividend upon an investment of $574,000,000.

Other laws affecting operation and increasing expense require 8-wheel cabooses instead of 4-wheel cabooses; reduced hours of service; days off at company's expense; additional watchmen at crossings; abolition of grade crossings; double track; safety appliances; electric headlights, etc. To comply with these and other numerous legislative decrees obviously increases operating costs, and this, in the long run, must be borne by the public.

Other Exasperating Bills

Failing to gain universal sanction for the full-crew demand, the Brotherhood referred to is now advocating "train-limit" bills to fix a maximum train length. The passage of such a law would react most expensively upon the carriers. Their efforts in reducing curves and grades, their adoption of improved brakes and couplings, their installation of engines of increased tractive power, and many other steps taken by them for the economical and efficient movement of freight would be largely nullified. Capital invested in all these improvements must earn its fixed charges, but a reduction in the size of the train would make this dubious, while certain to add to operating expenses through the necessity of additional trains and labor. Furthermore, the engines of increased tractive power would be valueless, to a degree, if not used to capacity; and other engines would have to be purchased.

These are some of the exasperating experiences

of the railroads that threaten their resources continuously, and make them eager to take refuge under the single control of the Federal arm.

Grave Assumption of Power

Nineteen States have legally asserted their right to control bond and stock issues of railroads operating within their limits and, doubtless, this number will increase. This is an exceedingly grave assumption of State power over railroads, for it possesses possibilities of danger to railroad credit. In the case of a railroad traversing several States, the consent of each being necessary to a proposed issue of securities, many things may happen. One State may withhold its consent until the delay so occasioned defeats the project. All States may approve it but one, and that one slay the project by its refusal.

All States but one may consent, and that one insist that some of the proceeds be spent within its own borders, although, perhaps, not needed there and actually needed in some other State. Hence, this newly developing feature of State regulation promises to place the financial standing and credit of a railroad at the mercy of the State, which may be influenced or actuated by either political selfishness or illiberality. While this may seem incredible, it is an outgrowth of State railroad regulation, and an illustration of the extremes to which it has been carried. Only Congress should regulate so momentous an issue, through its deputy, the Interstate Commerce Commission.

Interstate Aspect of Traffic

It may be fairly concluded, then, in view of the results of State regulation of railroads, that a multiplication of State Commissions is not the ultimate solution of our railroad problem. If attention be directed to the indisputable fact that a preponderating proportion of our railroad business is interstate in character—fully 85 per cent. of it—the inconsistency of shackling it with State control and the impossibility of ever regulating it adequately through State agencies become manifest.

Railroad terminals resemble harbors in their functions. The Federal Government provides adequately for harbors, their improvement and maintenance; but it does nothing for railroad terminals, which render commerce similar and, indeed, greater services. If the Government may not finance the construction of such important commercial facilities, it should smooth the way and ease the task of those whose duty it is to provide them. And the most certain way in which it may do this is to do what the framers of the Constitution empowered it to do: to assume full control over commerce among the several States for the protection of *all* the States.

Power of Congress Supreme

"The authority of Congress extends to every part of interstate commerce and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulations is not to be denied or thwarted by the commingling of interstate and intrastate operations * * *

"It has repeatedly been declared by the Court that as to those subjects which require a general system or uniformity of regulation the power of Congress is exclusive. In other matters, admitting of diversity of treatment according to the special requirements of local conditions, States may act within their respective jurisdictions *until Congress sees fit to act, and when Congress does act, the exercise of its authority overrides all conflicting State legislation.*"

In these two paragraphs, from the opinion of the Supreme Court of the United States in the "Minnesota Cases," is succinctly stated the plenary power of Congress to deal with the nation's railroads and to end State control of these commercial arteries.

State Rule Means Waste

Mr. Frank Trumbull, Chairman of the Railway Executives' Advisory Committee, representing over 80 per cent. of the country's railroad mileage last February, before the Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D. C., said: "We are quite willing to sit down at the table with you and help you draft a law, provided you emancipate us from the States. Millions of dollars are going over the dam in waste every year because of duplications, discriminations and litigations arising out of a division of authority over railroads between the States and the Federal Government."

That the railroads have substantial reasons for their desire to be released from State control is

not to be doubted. As pointed out by Mr. Trumbull, waste, discrimination, duplication and litigation are the fruits of State railroad regulation; while railroad development or efficiency has not been increased by it. Real railroad progress must ever be impossible under a chaotic, divided authority, and that is what our present system actually is. Private railroad enterprise cannot thrive longer under existing conditions. The present is too exacting; the future, to say the least, too uninviting. Under a single constructive authority, with a policy of absolute equality and fairness, railroad development should progress amazingly.

Complete Federal Control

The passage of the Newlands' resolution by Congress should lead to a thorough investigation of this question and, possibly, to the Federal incorporation of our railroads later. To provide efficient Federal control, the Interstate Commerce Commission should be enlarged and reorganized, and the prompt and intelligent performance of its duties made possible. Be that as it may, the "interstate" character of the vast bulk of this country's railroad traffic is an index finger pointing the way to complete Federal control as the one sensible, satisfactory solution of our transportation problem.

It will be Independence Day for the railroads when the rule of their 49 masters gives way to that designed for them by the Constitution, essential for the commerce of the country, and demanded for their salvation.

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